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FA-228-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 21st OF SEPTEMBER, 2026

FIRST APPEAL No. 228 of 2021

Versus

.....
Appearance:

Shri Mohit Bhadoria - Advocate for appellant.

None for respondent.
.....

ORDER

Per. Justice Gurpal Singh Ahluwalia

This First Appeal under Section 19 of the Family Courts Act / Section 28 of the Hindu Marriage Act has been filed against the judgment and decree dated 27.09.2017 passed by the First Additional District Judge, Dabra, District Gwalior in HMA No. 25/2017, by which a petition filed by appellant for grant of divorce has been rejected.

2. It is not out of place to mention here that respondent has refused to accept notice and, therefore, by order dated 30.07.2026, she was treated as served.

3. The facts necessary for disposal of present appeal, in short, are that appellant filed a petition under Section 13 of the Hindu Marriage Act against the respondent for grant of divorce on the ground that in spite of a decree passed under Section 9 of the Hindu Marriage Act, respondent has not joined



the company of appellant and, therefore, now appellant also is not interested in keeping the respondent as his wife.

It was the contention of appellant that he got married to the respondent on 09.06.2011. Respondent stayed with the appellant for four days, and thereafter, she went back to her parental home along with her family members. When she came back, then again after five to six days of her stay, she told the appellant that she wants to go back to her parental home as she was missing them very badly, and accordingly, she went back. Thereafter, she resided with the appellant only for seven to eight days. On 07.01.2013, respondent, along with the mother of appellant, came to Bhitwar on the pretext of purchasing medicines, and on the excuse of answering the call of nature, she left after boarding a bus. It was alleged that appellant, his uncle, grandfather, brother, and maternal uncle tried their level best to bring her back, but all the time she refused to join the company of appellant on the pretext that he was not to her liking and she does not want to reside with him. Thereafter, appellant issued a registered notice, and as the respondent did not join the company of appellant, therefore, he filed a petition under Section 9 of the Hindu Marriage Act. By order dated 29.09.2015, a decree under Section 9 of the Hindu Marriage Act was passed, but even thereafter, respondent did not join the company of appellant, and now appellant does not wish to keep the respondent as his wife.

4. It appears that respondent refused to accept notice and accordingly, by order dated 21.06.2017, the trial court proceeded *ex parte* against the respondent.



5. The evidence of appellant - (PW1), and (PW2) was recorded, and the trial court, by the impugned judgment and decree dated 27.09.2017, dismissed the petition for divorce.

6. Challenging the judgment and decree passed by the trial court, it is submitted by counsel for appellant that once the respondent did not join the company of appellant in spite of the decree under Section 9 of the Hindu Marriage Act, therefore, the trial court committed a material illegality by not granting a decree for divorce.

7. Heard learned counsel for appellant.

8. "Desertion" has been defined in the Explanation to Section 13(1) of the Hindu Marriage Act, which reads as under:

"13. Divorce

(1)

Explanation : In this sub section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be constructed accordingly."

"Desertion" means intentional and without any intention to return, deliberately abandoning the other without consent, without any valid reason and with the permanent intention to end the marriage.

9. Section 13(1A) (ii) of the Hindu Marriage Act reads as under:

"13. Divorce.

(1A) ...

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties."

10. The decree for restitution of conjugal rights (Exhibit P1) indicates



that respondent had appeared in the said case and she filed her written statement, and alleged that appellant was treating her with cruelty on account of demand of Rupees One Lakh and one motorcycle and, accordingly, she is residing in her parental home. Thereafter, it appears that respondent did not appear in the trial to give her evidence in the proceedings under Section 9 of the Hindu Marriage Act. Since respondent had not participated in the proceedings under Section 9 of the Hindu Marriage Act after filing her written statement, therefore, an *ex parte* decree for restitution of conjugal rights was granted against her.

11. It is the case of appellant that after the decree was passed, no cohabitation has taken place and that the respondent never joined his company. However, the evidence is completely silent about the fact as to whether any effort was made by appellant to bring the respondent back to her matrimonial house or not. There is nothing in his evidence to show that the appellant had ever sent a copy of the judgment (Exhibit P1) to the respondent, thereby informing her about the decree for restitution of conjugal rights. There is nothing on record to suggest that appellant had ever instituted an execution proceedings under Order XXI Rule 32 of the Code of Civil Procedure (CPC). There is nothing in the evidence to show that the appellant had ever made any attempt to bring the respondent back to her matrimonial house.

12. Under these circumstances, the trial court rightly rejected the petition filed by appellant for grant of divorce. Counsel for appellant could not point out any illegality in the judgment passed by the trial court.



13. The lack of effort by the husband to bring his wife back proves that he has no genuine desire for cohabitation.

14. The question for consideration is as to whether the wife had voluntarily and without any reason had left the company of appellant or not?

15. It is true that respondent had filed her written statement in the proceedings under Section 9 of the Hindu Marriage Act, and in that written statement, she made allegations regarding maltreatment of the respondent in her matrimonial house, but this Court cannot lose sight of the fact that sometimes a woman, on account of shortage of funds, may not be able to defend herself in the court. There is nothing on record to suggest that any maintenance amount was ever paid by appellant to the respondent.

16. Section 23(1)(a) of the Hindu Marriage Act, 1955 provides that in any proceedings under the Act, decree can only be granted by the court if the ground for granting relief exists and if it is satisfied that the petitioner is not in any way taking advantage of his own wrong or disability for the purpose of such relief, and not otherwise. It is also for the husband to prove that he was not waiting for the statutory period to expire so that he could file a petition for divorce, but he must prove that in fact, he had no intention to bring the marriage to an end, and it is only on account of the hostile attitude of the spouse, he is entitled to divorce on account of non-cohabitation after the decree for restitution of conjugal rights was passed.

17. It is true that respondent was proceeded *ex parte*, and she did not participate in the proceedings, but once the court had directed the appellant to prove his case, then entire burden is on the appellant to prove that he is not



trying to take advantage of his own fault.

18. If the evidence of appellant is read, then except by submitting that respondent had not cohabited even after the decree for restitution of conjugal rights was passed, nothing else was stated either by appellant or by (PW2) about the efforts made by appellant to bring the respondent back. On the contrary, it is specifically stated that since respondent has not cohabited with the appellant within a period of one year from the date of passing of decree for restitution of conjugal rights, therefore, now he does not want to treat her as his wife anymore.

19. Under these circumstances, since there is nothing on record to suggest whether the respondent was ever made aware of the decree for restitution of conjugal rights, and in absence of the fact that appellant had never made an effort either to get the decree executed or to bring his wife back, this Court is of considered opinion that the trial court did not commit any mistake by refusing to grant divorce.

20. Accordingly, judgment and decree dated 27.09.2017 passed by the First Additional District Judge, Dabra, District Gwalior in HMA No. 25/2017, is hereby affirmed.

21. Appeal fails and is hereby **dismissed**.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

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